

The Honorable Brian A. Tsuchida

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CHRISTOPHER J. HADNAGY, an  
individual; and SOCIAL-ENGINEER, LLC,  
a Pennsylvania limited liability company,

Plaintiffs,

v.

JEFF MOSS, an individual; DEF CON  
COMMUNICATIONS, INC., a Washington  
corporation; and DOES 1-10; and ROE  
ENTITIES 1-10, inclusive,

Defendants.

No. 2:23-cv-01932-BAT

**PLAINTIFFS' RESPONSE TO  
DEFENDANTS' MOTION TO SEAL**

**NOTED FOR CONSIDERATION:  
MARCH 28, 2024**

**I. INTRODUCTION**

Plaintiffs Christopher Hadnagy and Social-Engineer, LLC ("Plaintiffs") submit this response to Defendants Def Con Communications, Inc., and Jeff Moss' ("Defendants") Motion to Seal Documents Filed in Support of Their Motion to Exclude Plaintiffs' Damages Expert, Ben Thomas (Dkt. 90).

The documents at issue contain Plaintiffs' confidential financial and compensation information. Public disclosure of this information would cause Plaintiffs significant commercial harm. Defendants do not oppose sealing these materials.

## II. RELEVANT FACTS

### A. Documents and Information at Issue

Plaintiffs request that the following documents be kept under seal by this Court:

#### 1. Dkt. 89: Sealed Motion to Exclude Plaintiffs Damages Expert Ben Thomas

- Portions of this motion discuss Social-Engineer's financial information, including revenue, expenses, and profit/loss data.
- Dkt. 90: Contains a redacted version of the motion.

#### 2. Dkt. 92: Exhibit A to Mertens Declaration – Sealed Ben Thomas Expert Report

- This report details Social-Engineer's financial information, including income, revenue, expenses, and compensation paid to Hadnagy.
- Dkt. 91-1: Contains a redacted version of the expert report.

#### 3. Dkt. 93: Exhibit B to Mertens Declaration – Sealed Deposition Transcript of Plaintiffs' Expert Ben Thomas

- The sealed deposition transcript discusses Social-Engineer's sensitive financial data and Hadnagy's salary information.
- Exhibit A to Conrad Declaration: A redacted version of the deposition transcript, with redactions limited to mentions of Social-Engineer's financial and salary information.

#### 4. Dkt. 94: Exhibit C to Mertens Declaration – Sealed Spreadsheet (Bates No. SE\_001761)

- This document contains Social-Engineer's client names, contract amounts, and potential client names, all protected by nondisclosure agreements.

On August 21, 2024, this Court entered a Protective Order designating certain categories of documents as confidential. In accordance with that order, Plaintiffs marked these documents as confidential.

### B. Relevant Background

Social-Engineer, LLC provides security consulting services to corporations, government

1 agencies, and other organizations worldwide. Declaration of Christopher Hadnagy (“Hadnagy  
 2 Decl.”) ¶ 3. The company operates under strict non-disclosure agreements (NDAs) with its clients  
 3 and prospective clients and does not publicly disclose client identities, services rendered, or  
 4 financial terms. *Id.* Social-Engineer gains access to sensitive client data while assessing security  
 5 vulnerabilities. *Id.* Public disclosure of its clients’ names would pose severe security risks,  
 6 exposing both Social-Engineer and its clients to potential cyber threats. *Id.* Plaintiffs also take  
 7 protective measures to ensure that Social-Engineer’s financial information is protected and does  
 8 not become public. *Id.*

9 Additionally, Defendant Def Con Communications is central to the global cybersecurity  
 10 and hacker community, attracting both ethical hackers and malicious actors. Hadnagy Decl. ¶8.  
 11 Given the nature of this lawsuit, disclosing Social-Engineer’s confidential business and client  
 12 information in publicly accessible court documents heightens the risk of security breaches. *Id.* The  
 13 Court should carefully consider these risks when evaluating whether to seal these sensitive  
 14 materials. *Id.*

### 15 **III. AUTHORITY & ARGUMENT**

16 The Western District of Washington Local Civil Rules provide that where a party wishes  
 17 "to file a confidential document it obtained from another party in discovery," the party who  
 18 designated the document confidential who must, in its response to the motion to seal, satisfy LCR  
 19 5(g)(3)(B). LCR 5(g)(3)(B) requires:

20 (B) A specific statement of the applicable legal standard and the reasons for keeping a  
 21 document under seal, including an explanation of:

22 i. the legitimate private or public interests that warrant the relief sought;

23 ii. the injury that will result if the relief sought is not granted; and

1                   iii. why a less restrictive alternative to the relief sought is not sufficient.

2                   "When deciding a motion to seal, courts 'start with a strong presumption in favor of access  
3 to court records.'" *Burrows v. 3M Co.*, No. C19-1649-RSL, 2023 U.S. Dist. LEXIS 16339, 2023  
4 WL 1345429 at \*1 (W.D. Wash. Jan. 31, 2023) (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*,  
5 331 F.3d 1122, 1135 (9th Cir. 2003)). "This presumption, however, 'is not absolute and can be  
6 overridden given sufficiently compelling reasons for doing so.'" *Id.* (quoting *San Jose Mercury*  
7 *News, Inc. v. U.S. Dist. Ct. N. Dist. (San Jose)*, 187 F.3d 1096, 1102 (9th Cir. 1999)).

8                   For documents related to a dispositive motion, a party must demonstrate "compelling  
9 reasons" that outweigh the public interest in disclosure. *Kamakana v. City & County of Honolulu*,  
10 447 F.3d 1172, 1178-79 (9th Cir. 2006). Courts recognize compelling reasons when disclosure  
11 would result in improper use of court records, such as promoting public scandal or releasing trade  
12 secrets. *Id.* at 1179 (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978)).

13                   Courts acknowledge the risk of competitive harm through disclosure of confidential and  
14 proprietary information may warrant maintaining documents under seal, even considering the  
15 presumption of public access to judicial documents. *Nixon*, 435 U.S. at 598 (the court may ensure  
16 its records are not used "as sources of business information that might harm a litigant's competitive  
17 standing"); *Valley Broadcasting Co. v. U.S. District Court*, 798 F.2d 1289, 1294 (9th Cir. 1986)  
18 (noting considerations that weigh against disclosure include "the likelihood of an improper use,  
19 including . . . trade secret materials"); *Cent. Freight Lines, Inc. v. Amazon Fulfillment Servs.*, No.  
20 C17-0814-JLR, 2019 U.S. Dist. LEXIS 177330, 2019 WL 5103311, at 2 (W.D. Wash. Oct. 11,  
21 2019) (finding where information filed under seal "relates to confidential business details relating  
22 to [a business's] internal processes and procedures, and disclosure of that material could result in  
23

1 improper use by business competitors," compelling reasons to maintain the seal existed); *Brown*  
2 *v. Brown*, No. CV 13-03318 SI, 2013 U.S. Dist. LEXIS 207027, at 3 (N.D. Cal. Dec. 27, 2013)  
3 (sealing profits, losses, income, investments, and expenses that derive from financial statements  
4 and ledgers of two privately held companies. Public disclosure of this information could harm  
5 these companies if the information was used by its competitors.).

6 The documents currently under seal contain confidential financial and business  
7 information, including Plaintiffs' revenue, expenses, net income, and salary information. Hadnagy  
8 Decl. ¶4. As a privately held company, Social-Engineer does not publicly disclose this information.  
9 *Id.* Public disclosure would cause significant harm by providing competitors with insight into  
10 Plaintiffs' financial performance, enabling them to exploit this knowledge in negotiations and  
11 market positioning. *Id.* ¶5. Competitors could use access to Plaintiffs' contract amounts and sales  
12 data to gain an unfair advantage, allowing them to undercut pricing, poach clients, and strategically  
13 target Plaintiffs' business, ultimately increasing costs and reducing profit margins. *Id.* ¶6.

14 Additionally, exposure of Hadnagy's personal salary information would negatively impact  
15 his ability to negotiate compensation with future employers, as potential employers could use it to  
16 justify lower salary offers. Hadnagy Decl. ¶9. Because of the sensitive nature of this information,  
17 the potential harm to Plaintiffs is substantial and multifaceted, encompassing competitive,  
18 operational, financial, legal, and security risks.

19 Furthermore, revealing Plaintiffs' clients' names would violate the terms of non-disclosure  
20 agreements (NDAs) entered into with clients and expose both Plaintiffs and their clients to  
21 heightened security threats. Hadnagy Decl. ¶7. Plaintiffs handle highly sensitive security data, and  
22 disclosing their clients' identities would create new vulnerabilities, making both Plaintiffs and  
23 their clients prime targets for cyber threats. *Id.* Given Defendants' established role in the global

1 hacker and cybersecurity community—where both ethical hackers and malicious actors operate—  
2 the risks associated with public disclosure are particularly severe.

3 Plaintiffs have taken the least restrictive approach by offering redacted versions of all  
4 documents except Dkt. 94: Exhibit C to Mertens Declaration, which contains only client names  
5 and contract amounts. Redacting that document would remove all substantive content, rendering  
6 it meaningless.

7 This type of sensitive business information falls squarely within the category of records  
8 that should be sealed. *See Raner v. Fun Pimps Ent. LLC*, No. 3:22-cv-05718-TMC, 2024 U.S. Dist.  
9 LEXIS 42585, at \*6 (W.D. Wash. Mar. 11, 2024) (sealing revenue, expenses, profits, and  
10 compensation details due to the risk of competitive harm).

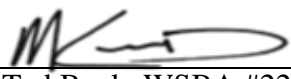
11 **IV. CONCLUSION**

12 For the foregoing reasons, Plaintiffs respectfully request that the Court grant Defendants'  
13 motion to maintain these documents under seal.

14 As required by Local Civil Rule 7(e)(6), I certify that Plaintiffs' Response to Defendants'  
15 Motion to Seal contains 1,292 words, excluding the parts that are exempt by Local Civil Rule  
16 7(e)(6).

17 DATED this 21st day of March, 2025 at Seattle, Washington.

18  
19 **FREY BUCK,**

20 By:   
21 Ted Buck, WSBA #22029  
22 Mark Conrad, WSBA #48135  
23 *Attorneys for Plaintiffs*


**CERTIFICATE OF SERVICE**

The undersigned certifies under the penalty of perjury according to the laws of the United States and the State of Washington that on this date I caused to be served in the manner noted below a copy of this document entitled **PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO SEAL** on the following individuals:

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DATED this 21st day of March 2025 at Seattle, Washington.

  
Amber Holmes, Legal Assistant